

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL JOSEPH RHINEHART,) No. C 11-0812 JSW (PR)
Plaintiff,)
v.)
MATTHEW CATE, Director of the)
California Department of Corrections and)
Rehabilitation; A. HEDGPETH, Warden;)
K. HARRINGTON, Warden,)
Defendants.)
)
)
)
)
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)
**ORDER PROVIDING PLAINTIFF
NOTICE AND WARNING;
SCHEDULING SUPPLEMENTAL
BRIEFING**

Plaintiff, a California prisoner pro se, filed this civil rights action under 42 U.S.C. 1983. Defendants have filed motion to dismiss in which they argue that Plaintiff's claims are not exhausted as required by 42 U.S.C. 1997e. Pursuant to *Woods v. Carey*, No. 09-15548, slip op. 7871, 7884-85 (9th Cir. July 6, 2012), Plaintiff is given the following notice and warning for a second time:

If defendants file an unenumerated motion to dismiss for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case.

You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of

1 **perjury) or authenticated documents, that is, documents accompanied by a**
2 **declaration showing where they came from and why they are authentic, or**
3 **other sworn papers, such as answers to interrogatories or depositions.**

4 **If defendants file a motion to dismiss and it is granted, your**
5 **case will be dismissed and there will be no trial.**

6 *See also Wyatt v. Terhune, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003).*

7 Plaintiff may supplement his opposition to Defendants' motion in light of the
8 foregoing on or before **August 1, 2012**. Defendants shall file a supplemental reply brief
9 within **7 days** of the date any supplemental opposition is filed. If Plaintiff does not
10 supplement his opposition, Defendants' motion will be decided on the papers that have
11 already been filed.

12 **IT IS SO ORDERED.**

13 DATED: July 11, 2012



JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL JOSEPH RHINEHART,

Case Number: CV11-00812 JSW

Plaintiff,

CERTIFICATE OF SERVICE

V.

MATTHEW CATE et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 11, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael L. Rhinehart #:C39412
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960

Dated: July 11, 2012

Jennifer Ottolini

Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk